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April 14, 2009

Via Hand Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 - 12th Street, S.W.
Washington, D.C. 20554

FILED/ACCEPTED

APR 14 2009

Federal Communications Commission
Office of the Secretary

Re: *OLS, Inc. and TeleUno, Inc.*
Petition for Expedited Declaratory Ruling Regarding Application of
Sections 201(b) and 203(c) to Underlying Carrier's Practices and Charges

Dear Secretary Dortch:

On April 9, 2009, OLS, Inc. and TeleUno, Inc. ("Petitioners") filed a Petition for Expedited Declaratory Ruling Regarding Application of Sections 201(b) and 203(c) to certain practices and charges which Petitioners have experienced, and continue to experience, from its underlying carrier. Petitioners first raised these issues and requested Commission determination of the reasonableness of the identified practices and charges by filing a similar Petition for Declaratory Ruling on September 19, 2008. The April 9th Petition for Expedited Declaratory Ruling has been necessitated by the Commission's failure to release the September 2008 Petition for public comment and resolution.

As the April 9th Petition makes clear, ten days following Petitioners' filing of the September 2008 Petition -- at which time no Public Notice calling for comment had been issued -- the party that stands accused of engaging in unreasonable practices as a matter of its general business culture filed a document which can only be considered an "opposition" to that Petition. No other entity had been advised of the opportunity to comment upon the issues raised in the Petition, or even that the Petition existed. Consistent with the FCC's *ex parte* rules, Petitioners are entitled to the support of all commenters that wish to weigh in on the issues set forth in the Petition in order that the full magnitude of those issues may be made clear to the Commission. And following such public participation, Petitioners are to be afforded the opportunity to respond to all information and arguments presented to the agency -- both pro and con -- with respect to the September 2008

Petition. Unfortunately, this was not the case. Because the FCC did not summarily reject Global Crossing Bandwidth, Inc.'s ("GX") premature "opposition" to the September 2008 Petition, only the viewpoint of a single entity – the carrier identified as engaging in the unreasonable practices set forth in the September 2008 Petition, was permitted to influence the Commission's deliberations upon that Petition. As set forth more fully in the April 9th Petition for Expedited Declaratory Ruling, FCC Staff has indicated -- through words and action -- that the arguments advanced by GX in its September 29, 2008 opposition have influenced the FCC, and in fact have done so to such a degree that the agency has refused to even release the September 2008 Petition for public comment and resolution.

As a matter of courtesy, Petitioners provided GX a copy of the April 9th Petition for Expedited Declaratory Ruling. Petitioners are now compelled to bring to the Commission's attention GX's continuing disregard for the *ex parte* rules and abuse of Commission processes.

On the very day Petitioners were compelled to file their Petition for Expedited Declaratory Ruling, GX submitted a letter to Marlene H. Dortch, with a copy to Petitioners' counsel, purporting to "update the record" of the September 2008 Petition matter – notwithstanding the fact that even today, no docket or file number has been assigned to the September 2008 Petition. In short, there is not now – nor pending release of the September 2008 Petition by Public Notice could there be – *any* "record" with respect to the September 2008 Petition. Indeed, GX's April 9th letter can identify no proceeding with which its April 9th letter may be associated.

For the convenience of the Commission, and to illustrate the below two points, Petitioners submit GX's April 9th letter to the Secretary and respectfully request that this document be associated with their Petition for Expedited Declaratory Ruling in order that the Commission may take judicial notice of the following:

1. GX continues to attempt to impermissibly undermine resolution of Petitioners' issues rightfully raised, and presently pending before the Commission;
2. The District Court decision attached to GX's April 9th letter is irrelevant to the resolution of the issues identified by Petitioners – both in the September 2008 Petition and the April 9th Petition for Expedited Declaratory Ruling; for that reason, the District Court decision attached to GX's letter filing is not attached here. As set forth in the Petition for Expedited Declaratory Ruling, the matters raised by Petitioners are of broad-reaching import and Petitioners, as well as numerous other entities within the scope of the FCC's expertise, continue to be subject to the identified unreasonable practices. Thus, regardless of a district court decision, the practices and charges identified in Petitioners' September 2008 and April 9th Petitions remain unreasonable and violative of the Communications Act and must be resolved expeditiously.

Petitioners note, however, that through its April 9th letter, GX illustrates quite handily Petitioners most compelling argument in favor of expedited resolution of the issues raised in the September 2008 and April 9th Petitions: during the six months since the filing of the September 2008 Petition, the District Court judge that had been holding an active case in abeyance in order to

MARLENE H. DORTCH, SECRETARY

APRIL 14, 2009

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permit the FCC to rule on overarching issues within its particular sphere of expertise did grow frustrated by the Agency's lack of action. Indeed, the Court proceeded to issue a ruling on the telecommunications-specific issues before it, ultimately issuing a ruling which embodies certain fundamental misunderstandings of controlling principles of federal communications law. Wholly apart from the need of all regulated entities to be relieved of the unreasonable practices identified by Petitioners (which need cannot and should not be underestimated by the Commission), an expedited resolution of the issues set forth in the September 2008 and April 9th Petitions is absolutely essential in order to assist the Court in its further deliberations on the live controversy which is still before it.

To the extent you have any questions concerning this supplemental submission, to be associated with the Petition for Expedited Declaratory Ruling filed by OLS, Inc. and TeleUno, Inc. on April 9, 2009, please do not hesitate to contact the undersigned.

Respectfully submitted,

A handwritten signature in cursive script, reading "Catherine M. Hannan".

Charles H. Helein
Catherine M. Hannan
Counsel for OLS, Inc. and TeleUno, Inc.

Enclosure

cc: Service List Parties

Exhibit A

Global Crossing Bandwidth, Inc.
Ex Parte Submission
Dated April 9, 2009



Global Crossing

Michael J. Shortley, III
Vice President & Regional
General Counsel - North America
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Rochester, NY 14623

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April 9, 2009

BY OVERNIGHT DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: OLS, Inc./TeleUno, Inc.
Petition for Declaratory Ruling

Dear Ms. Dortch:

Enclosed for filing are the original and four (4) copies of a letter updating the record with respect to the Petition captioned above.

Please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same in the enclosed self-addressed envelope.

Please contact the undersigned counsel if you have any questions regarding this matter.

Sincerely,

✓ cc: Charles H. Helein, Esq. (w/ encls.)



Global Crossing

Michael J. Shortley, III
Vice President & Regional
General Counsel - North America
225 Kenneth Drive
Rochester, NY 14623

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April 9, 2009

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: OLS, Inc./TeleUno, Inc.
Petition for Declaratory Ruling

Dear Ms. Dortch:

Global Crossing Bandwidth, Inc. ("Global Crossing") respectfully submits this letter to update the record on the Petition for Declaratory Ruling filed by OLS, Inc. and TeleUno, Inc. on September 19, 2008 ("Petition"). The Commission has not placed the Petition on Public Notice and for the reasons set forth herein, there is no reason for the Commission to do so.

As the Commission is aware, OLS/TeleUno filed their Petition seeking a declaratory ruling that the imposition of minimum monthly usage charges pursuant to a carrier services agreement between OLS/TeleUno and Global Crossing contravenes the Communications Act. As Global Crossing pointed out, OLS/TeleUno filed their petition only *after* the United States District Court for the Western District of New York *denied* OLS/TeleUno's motion for summary judgment and granted Global Crossing's cross-motion on the issue of liability. Accordingly, Global Crossing pointed out that there was no basis for the Commission to issue a declaratory ruling as there is no uncertainty to remove or a controversy to terminate. *See* Letter from Joan M. Griffin to Marlene H. Dortch (Sept. 29, 2008).

Recently, the United States District Court for the Western District of New York denied OLS/TeleUno's motion to stay the District Court proceedings or to refer the matter to the Commission. A copy of the Court's Decision and Order is attached.

As the Court has confirmed, there is no live controversy between the parties. Nor is there any uncertainty to remove. See 47 C.F.R. § 1.2. The Commission should either decline to place the Petition on Public Notice or should dismiss the Petition outright.

Respectfully submitted,

H. J. Shady

CERTIFICATE OF SERVICE

I, Suzanne Rafalko, hereby certify that true and correct copies of the foregoing Supplement to Petition for Expedited Declaratory Ruling, were served upon the following, in the manner indicated, this 14th day of April, 2009.

Marlene H. Dortch, Secretary
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c/o NATEK
236 Massachusetts Avenue, N.E.
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Washington, DC 20002
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(via overnight courier)

Commissioner Jonathan S. Adelstein
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Suzanne Rafalko